

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SANDRA SANDERS

PLAINTIFF

V.

CIVIL ACTION NO. 3:20-CV-00830-CWR-LGI

MISSISSIPPI DEPARTMENT OF
REHABILITATION SERVICES

DEFENDANT

MOTION TO CONTINUE TRIAL DATE

Defendant, Mississippi Department of Rehabilitation Services (“MDRS”), by and through counsel, hereby files this motion to continue the June 12, 2023, trial setting, as follows:

1. This lawsuit alleges race discrimination in a failure to promote matter, stemming from the statutorily authorized appointment within the MDRS. See Miss. Code Ann. §25-9-107(c)(xvi). This action was filed by Plaintiff on October 2, 2020 in the Circuit Court of Hinds County, Mississippi, and removed to this Court on December 29, 2020. [Doc. 1].

2. This Court denied summary judgment in this matter on February 14, 2022 [Doc. 51]. As to the prima facie case, this Court quickly found that Sanders had met her initial burden where the position at issue was a non-advertised, non-competitive appointed position. *Id.* at 2. As to pretext, this Court found a triable question of fact as to whether the particular position had previously been advertised, as opposed to appointed. *Id.* at 4.

3. The matter currently is set during the trial period beginning June 12, 2023. [Text Order dated March 1, 2023]. The parties were notified via e-mail on March 21, 2023 that: “The Court has a criminal matter scheduled to begin on June 5, and the parties in that case just confirmed that the trial will last longer than originally planned. Instead of concluding within one week, the parties now anticipate that it will take up to 2 weeks. If the criminal case proceeds to trial, we will do all that we can to bring it to conclusion without undue delay. But, obviously it jeopardizes the start date for your

trial. We hope we will be able to begin your trial as soon as a verdict is returned in the criminal case.” (Ex. A, Email). The pretrial conference is set for May 12, 2023.

4. During the same time period that this matter was filed, seven other plaintiffs (represented by different counsel) filed very similar lawsuits against MDRS alleging race discrimination based on promotion and pay issues: *Black v. MDRS*, 3:20-cv-643-KHJ-LGI (filed October 5, 2020); *Gathings v. MDRS*, (filed October 5, 2020, later severed), 3:21-cv-709-KHJ-LGI; *Gray and McCurdy v. MDRS*, (filed November 12, 2020, later severed), 3:21-cv-708 KHJ-LGI; *Laury v. MDRS*, (filed December 23, 2020, later severed), 3:21-cv-712-KHJ-LGI; *Hart v. MDRS*, (filed December 23, 2020, later severed), 3:21-cv-713-KHJ-LGI; and *Hobson v MDRS*, 3:21-cv254-HTW-LGI (filed April 13, 2021).

5. Summary judgment was granted in favor of MDRS in all of those cases (Ex. B, Summary Judgment Decisions).

6. All cases were timely appealed to the Fifth Circuit Court of Appeals. Of the six appeals, four of them have been affirmed. (Ex. C, Fifth Circuit unpublished opinions in *Gathings*, *Gray/McCurdy*, *Laury*, and *Hobson*.)

7. The remaining two cases on appeal – *Black* and *Hart* – are both set for oral argument before the Fifth Circuit on June 6, 2023 during the afternoon session commencing at 1:00 p.m. in New Orleans (Ex. D, Oral Argument settings).

8. As undersigned counsel is lead counsel in all three matters, a June 12 trial setting in *Sanders* will impose an undue hardship and limit time for trial preparation.

9. In addition, co-counsel Morgan Middleton has announced her resignation from the Office of the Attorney General effective June 9, 2023. Undersigned counsel will need additional time to get a second chair attorney up to speed for trial.

10. Finally, and more importantly, because of the significant overlap in facts among *Black*, *Hart*, and the instant case filed by Ms. Sanders (specifically, the appointment issue and the burden on the Plaintiff at the pretext stage), undersigned counsel requests a continuance of the trial in this matter pending a ruling by the Fifth Circuit in one or both of those matters. Depending on such ruling(s), it could significantly impact both settlement negotiations as well as trial strategy.

11. Opposing counsel has been contacted but does not consent to a continuance.

12. The Fifth Circuit has explained that the good cause standard requires the “party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension.” *S & W Enters., L.L.C. v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 535 (5th Cir. 2003) (quoting 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1522.1 (2d Ed.1990)). MDRS submits that good cause exists here for a continuance.

13. Given the straight-forward nature of the instant motion, MDRSs respectfully requests that it be excused from providing a separate supporting memorandum as required by L.U.Civ.R. 7(b)(4).

WHEREFORE, PREMISES CONSIDERED, Defendant MDRS hereby requests that this Honorable Court continue the trial setting of June 12, 2023 and reschedule it at the first available trial setting after the Fifth Circuit issues a ruling in either the *Hart* or the *Black* matters referenced above. In addition, MDRS requests that the pretrial conference set for May 12, 2023 also be continued.

DATE: May 1, 2023.

MISSISSIPPI DEPARTMENT OF
REHABILITATION SERVICES, *Defendant*

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent an electronic copy of the document to all counsel of record.

This, the 1st day of May, 2022.

/s/ Bethany B. Johnson
BETHANY B. JOHNSON